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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 KOHEN DIALLO UHURU,

12 Plaintiff,

13 v.

14 J. BENAVIDEZ, et al.,

15 Defendants.
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No. 2:22-CV-0784-TLN-DMC-P

ORDER

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to
18 42 U.S.C. § 1983. Pending before the Court is Plaintiff's motion for the appointment of counsel,
19 ECF No. 14.¹

20 The United States Supreme Court has ruled that district courts lack authority to
21 require counsel to represent indigent prisoners in § 1983 cases. See Mallard v. United States Dist.
22 Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the court may request the
23 voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). See Terrell v. Brewer, 935
24 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).
25 A finding of "exceptional circumstances" requires an evaluation of both the likelihood of success
26 on the merits and the ability of the plaintiff to articulate his claims on his own in light of the
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28 ¹ In this filing, Plaintiff also appears to seek injunctive relief. This portion of Plaintiff's filing will be addressed by separate findings and recommendations issued herewith.

1 complexity of the legal issues involved. See Terrell, 935 F.2d at 1017. Neither factor is
2 dispositive and both must be viewed together before reaching a decision. See id. In Terrell, the
3 Ninth Circuit concluded the district court did not abuse its discretion with respect to appointment
4 of counsel because:

5 . . . Terrell demonstrated sufficient writing ability and legal knowledge to
6 articulate his claim. The facts he alleged and the issues he raised were not
7 of substantial complexity. The compelling evidence against Terrell made it
8 extremely unlikely that he would succeed on the merits.

Id. at 1017.

9 In his motion, Plaintiff states that “unusual circumstances” in his case consist of
10 chest pains, difficulty breathing, and various dusts, lint, and bacteria being “disbursed through the
11 California Medical Facility’s ventilation system where the windows and cell doors are tightly
12 sealed.” ECF No. 14, pg. 1. Plaintiff contends that he has experienced “deliberate denials” of his
13 requests for an inhaler. See id. Plaintiff also states that he has been denied “requested medical
14 accommodation” for a humidifier due to asthma, as well as medical attention for other issues
15 including “chronic anxiety.” Id. Plaintiff also states he has a “permanent medical disability” due
16 to incontinence and post-traumatic stress disorder. Id. According to Plaintiff, he is
17 “psychologically incapable” of double-celling or living in any dorm “without killing a
18 homosexual, transgender, bisexual, sodomite, or any other type of male genitalia,” which Plaintiff
19 contends violates the tenets of his faith. Id.

20 The Court does not find that appointment of counsel is warranted at this time.
21 First, a review of Plaintiff’s filings indicates he is capable of articulating his claims on his own
22 despite the alleged medical problems. Second, Plaintiff’s claims of First and Eighth Amendment
23 violations, as outlined in the first amended complaint, do not appear to be either legally or
24 factually complex. Third, at this stage of the proceedings before Plaintiff’s first amended
25 complaint has been served and prior to commencement of discovery, the Court cannot say that
26 Plaintiff has established any particular likelihood of success on the merits of his claims. Finally,
27 with respect to the various medical problems outlined in Plaintiff’s motion, Plaintiff has not
28 provided any documentation to show the existence of any specific medical problem or the

1 limitations such problems might have on his ability to proceed in this case on his own.

2 Accordingly, IT IS HEREBY ORDERED that Plaintiff's request for the
3 appointment of counsel, ECF No. 14, is denied.

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5 Dated: March 1, 2023

A handwritten signature in dark ink, appearing to read 'Dennis M. Cota', written over a horizontal line.

DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE